

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

**In Re: Complaint and Petition for Relief)
Of South Carolina Net, Inc. d/b/a Spirit)
Communications v. BellSouth)
Telecommunications, LLC d/b/a AT&T)
South Carolina)**

Docket No. 2016-79-C

**REBUTTAL TESTIMONY OF MICHAEL D. BALDWIN
ON BEHALF OF SOUTH CAROLINA NET, INC. d/b/a SPIRIT COMMUNICATIONS
MAY 5, 2016**

1 **REBUTTAL TESTIMONY OF MICHAEL D. BALDWIN**

2 **ON BEHALF OF SOUTH CAROLINA NET, INC. d/b/a SPIRIT COMMUNICATIONS**

3
4 **I. INTRODUCTION**

5
6 **Q. PLEASE STATE YOUR NAME.**

7 A. Michael D. Baldwin.

8
9 **Q. ARE YOU THE SAME MICHAEL D. BALDWIN WHO SUBMITTED DIRECT**
10 **TESTIMONY IN THIS MATTER ON APRIL 7, 2016?**

11 A. Yes.

12
13 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

14 A. I will respond to assertions in the direct testimony of AT&T witness J. Scott McPhee that
15 relate to the issues I discussed in my direct testimony.

16
17 **Q. IS SPIRIT MISREADING THE ICA?**

18 A. No. AT&T offers 911 services, specifically access to Selective Routers and to 911
19 databases where AT&T is the 911 Service Provider to Public Safety Answering Points
20 (“PSAPs”), because AT&T is required to do so. It is not AT&T’s responsibility to ensure
21 that Spirit complies with Spirit’s 911 service obligations to its own end user customers.
22 AT&T has not cited any law that requires it to assume this responsibility. Like all

1 telecommunications carriers, Spirit has an obligation to provide its end users with access
2 to 911 services.

3
4 Spirit may choose to purchase AT&T's 911 services, which includes 911 interconnection
5 facilities offered by AT&T (or 911 interconnection facilities that Spirit self provisions or
6 that a third party provides) and 911 trunks provisioned by AT&T over those facilities so
7 that 911 calls from Spirit's end users will be routed through AT&T's Selective Router to
8 the PSAP. However, equally, Spirit may choose not to purchase AT&T's 911 services,
9 but rather may purchase the 911 services of a third party provider thereof to gain access
10 to AT&T's Selective Routers, using the 911 interconnection facilities and 911 trunks that
11 the third party has in place with AT&T where AT&T is the 911 Service Provider.

12 Whether Spirit chooses to purchase AT&T's 911 services or to purchase the 911 services
13 of a third party provider, if AT&T is the 911 Service Provider with the Selective Router,
14 AT&T will always provision the 911 trunks either on facilities that AT&T provides, that
15 an interconnecting carrier self provides, or that a third party provides.

16
17 AT&T chooses to focus exclusively on the provisions in the Attachment 5 of the parties
18 Interconnection Agreement ("ICA") for 911/E911 services, and particularly the 911
19 trunking provisions in Attachment 5 thereof, ignoring the optional nature of the entire
20 911 service offering set forth in the ICA's General Terms and Conditions ("GTCs") and
21 in Attachment 2 thereof setting forth the Network Interconnection provisions. The
22 optional nature of 911 services offered by AT&T cannot be ignored. It is at the heart of
23 the dispute between Spirit and AT&T, as well as competitive local exchange carriers

1 (“CLECs”) across the country that must access AT&T’s Selective Routers for the 911
2 calls of their end users to reach the appropriate PSAPs. Spirit attempted to disconnect
3 the 911 trunks and the 911 interconnection facilities it previously purchased from AT&T
4 because Spirit no longer wanted to use AT&T’s 911 services. Rather, Spirit had already
5 made arrangement, and implemented those arrangements, with a third party provider of
6 911 services, specifically Bandwidth.com, Inc. (“Bandwidth,” formerly Dash911). Spirit
7 has merely sought to take advantage of the optional nature of the 911 services offered by
8 AT&T as set forth in the ICA.

9
10 **Q. MUST SPIRIT INTERCONNECT WITH AT&T AT ITS SELECTIVE ROUTERS**
11 **TO SEND 911 TRAFFIC TO PSAPs IN SOUTH CAROLINA?**

12 A. While AT&T has incorrectly characterized my testimony by suggesting that I implied
13 AT&T is the only 911 Service Provider where AT&T operates as the incumbent local
14 exchange carrier (“ILEC”) in South Carolina and that Spirit must use AT&T to connect
15 to all 911 services in South Carolina. The fact is that the PSAP has not contracted with
16 an entity other than AT&T where AT&T is the ILEC in South Carolina, and therefore
17 AT&T is the 911 Service Provider where it is the ILEC in South Carolina. Access to 911
18 services in other areas of South Carolina where AT&T is not the ILEC and the 911
19 Service Provider is not at issue in Spirit’s Complaint. AT&T introduces confusion that
20 does not exist. In other parts of South Carolina where there are other 911 Service
21 Providers through which Spirit must connect to Selective Routers in order to send the 911
22 calls of Spirit’s end users to PSAPs, specifically where Windstream, CenturyLink, and
23 Frontier are the 911 Service Providers, Spirit has been permitted to disconnect 911 trunks

1 and 911 interconnection facilities it had in place with these 911 Service Providers. Spirit
 2 now provides 911 service to its end users in the areas where Windstream, CenturyLink,
 3 and Frontier are the 911 Service Providers by using Bandwidth as the third party provider
 4 of 911 services to access to the Selective Routers and PSAPs. These 911 Service
 5 Providers recognize their responsibility to offer access to their Selective Routers, but they
 6 also recognize that it is Spirit's responsibility to ensure that Spirit's end users have access
 7 to the PSAPs for 911 calls and that Spirit may choose how to meet this responsibility.

8
 9 It is true today that where AT&T is the 911 Service Provider in South Carolina, Spirit
 10 must interconnect with AT&T's Selective Routers, but Spirit may interconnect either
 11 directly using AT&T's 911 services described in Attachment 5 of the ICA or it may do so
 12 indirectly through a third party provider of 911 services. The general terms of the ICA
 13 applying to all Interconnection Services¹ make clear that Spirit has the option to purchase
 14 interconnection facilities, including interconnection facilities for access to AT&T's
 15 Selective Routers where AT&T is the 911 Service Provider.² If Spirit chooses not to
 16 purchase AT&T's 911 interconnection services, Spirit will ultimately have to reach the
 17 AT&T Selective Routers where AT&T is the 911 Service Provider through a third party

¹ Under the ICA, "Interconnection Service(s)" "means Interconnection, Resale Services, 251(c)(3) UNEs, Collocation, functions, *facilities*, products and services *offered* under this Agreement." (Emphasis added). See MDB-1 at GTC, Section 2.96. The ICA between Spirit and AT&T is referenced as Exhibit MDB-1 in my Direct Testimony. Exhibit MDB-1 was not produced as an attachment to my Direct Testimony because it was previously produced as an exhibit to the Complaint and Petition for Relief.

² Section 42.1 of the GTCs of the ICA permissively provides that "[t]his Agreement is the arrangement under which the Parties *may* purchase from each other Interconnection Services." (Emphasis added). See Exhibit MDB-1.

1 that has 911 interconnection facilities and 911 trunks in place with AT&T's Selective
2 Routers, such as Bandwidth.

3
4 It is also true that, regardless of how Spirit interconnects with AT&T in order to reach
5 AT&T's Selective Routers where AT&T is the 911 Service Provider, ultimately AT&T
6 will need to provision the 911 trunks on the 911 interconnection facilities, but whether
7 those 911 trunks are established directly or indirectly depends on whether Spirit
8 purchases AT&T's 911 interconnection services from AT&T directly. If Spirit does not
9 purchase 911 interconnection services from AT&T directly pursuant to Attachment 5 of
10 the ICA, then the optional network interconnection provisions in Attachment 2 of the
11 ICA are relevant. Specifically, the network interconnection provisions of the ICA make
12 clear that Spirit has the option to establish certain trunks, including 911 trunks where
13 AT&T is 911 Service Provider.³ Indeed, despite the fact that the ICA includes an
14 attachment setting forth the terms and conditions of Operator Services/Directory
15 Assistance ("OS/DA"),⁴ Spirit has chosen not to interconnect with AT&T for the purpose
16 of obtaining the ancillary OS/DA services that AT&T offers and, accordingly, Spirit has
17 not put in place OS/DA trunk groups connected to AT&T, and therefore, Spirit is not
18 billed by AT&T and does not pay for OS/DA services. While ancillary 911 services
19 differ from ancillary OS/DA services in that where AT&T is the 911 Service Provider, all

³ Section 4.1.2 of Attachment 2 of the ICA permissively provides that "[t]runk groups for ancillary services (e.g., OS/DA, BLVA, High Volume Call In and E911) and Meet Point or Third Party (as appropriate) Trunk Groups *can be established* between CLEC's switch and the appropriate **AT&T-22STATE** Tandem Switch as further provided in this Section 4.0." (Emphasis added). See Exhibit MDB-1.

⁴ See Exhibit MDB-1 at Attachment 6 (Customer Information Services).

1 911 calls must ultimately go through AT&T's Selective Routers, for now,⁵ in order to
2 reach a PSAP, ancillary 911 services are no different than ancillary OS/DA services in
3 that there are alternate means to obtain or access these services.

4
5 The ICA provides Spirit with the option to purchase or not purchase Interconnection
6 Services directly from AT&T, including 911 interconnection services. Similarly, the ICA
7 provides Spirit with the option to establish certain ancillary trunks, such as 911 trunks or
8 OS/DA trunks, depending on how or whether Spirit accesses or uses those services.

9 Despite the provisions in the ICA that provide Spirit with these options, AT&T wants to
10 prevent Spirit from taking advantage of the options that the ICA provides, specifically
11 whether to interconnect directly with AT&T and establish 911 trunks on those direct
12 connection facilities for access to AT&T's Selective Routers, or to interconnect
13 indirectly with AT&T through the interconnection facilities and 911 trunks that a third
14 party has established with AT&T.

15
16 Mr. McPhee spends the bulk of his testimony focusing on the direct interconnection
17 option provided under the ICA as set forth in Attachment 5 thereof. Mr. McPhee glosses
18 over Section 42.1 of the GTCs and Section 4.1.2 of Attachment 2 of the ICA as if they
19 have no bearing on the applicability of Attachment 5. However, that is incorrect. The
20 terms and conditions in Attachment 5 of the ICA only have meaning if Spirit chooses to
21 implement those services directly with AT&T, either by purchasing AT&T's 911
22 interconnection facilities (or using the interconnection facilities that Spirit self provisions

⁵ As PSAPs migrate to IP networks, the need for Selective Routers and 911 Service Providers such as AT&T will be eliminated.

1 or obtains from a third party), which facilities are then provisioned by AT&T to establish
2 911 trunks connected to the AT&T Selective Router. Similarly, the OS/DA provisions in
3 Attachment 6 of the ICA only have meaning if Spirit chooses to implement those
4 services. Spirit has not implemented the OS/DA services offered by AT&T, and the
5 OS/DA provisions in Attachment 6 of the ICA do not currently apply to Spirit. Even
6 though Spirit did implement the 911 services described in Attachment 5 of the ICA
7 initially, Spirit no longer wishes to obtain these ancillary 911 services from AT&T.
8 Accordingly, Spirit has implemented arrangements with Bandwidth to access AT&T's
9 Selective Routers where AT&T is the 911 Service Provider in South Carolina over the
10 911 interconnection facilities and 911 trunks that Bandwidth has in place with AT&T in
11 South Carolina and has attempted to terminate the 911 services it receives from AT&T by
12 submitting orders to disconnect 911 trunks and 911 interconnection facilities.

13
14 **Q. DO YOU AGREE WITH AT&T'S PROPOSED SOLUTION FOR COMPLYING**
15 **WITH THE ICA'S REQUIREMENT TO OBTAIN 911 TRUNKS FROM AT&T?**

16 A. No. If Spirit wanted to replace the direct interconnection facilities it originally purchased
17 from AT&T pursuant to Attachment 5 of the ICA with its own facilities or those of a
18 third party provider, maintaining the direct connection between Spirit's switch and
19 AT&T's switch, then AT&T's proposal to "re-groom" the new interconnection facilities
20 and "roll over" the 911 trunks that AT&T originally provisioned might make sense.
21 However, Spirit no longer chooses to purchase the direct connection 911 services offered
22 by AT&T under Attachment 5 of the ICA. Rather, Spirit is interconnecting indirectly

1 with AT&T through Bandwidth's 911 interconnection facilities and 911 trunks in place
2 with AT&T as permitted by the ICA.

3
4 Today, Spirit sends all 911 calls from its end users to the AT&T Selective Routers where
5 AT&T is the 911 Service Provider via Bandwidth's 911 interconnection facilities with
6 AT&T and the 911 trunks that AT&T provisioned on those interconnection facilities
7 between Bandwidth and AT&T. No traffic, and certainly no 911 traffic, is sent across the
8 911 interconnection facilities and 911 trunks that Spirit originally ordered directly from
9 AT&T. There is no need to roll over any the existing 911 trunks that AT&T provisioned
10 on the direct interconnection facilities with Spirit to the Bandwidth direct interconnection
11 facilities with AT&T because 911 trunks provisioned by AT&T already exist on
12 Bandwidth's interconnection facilities. The ICA does not require Spirit to establish 911
13 trunks on 911 interconnection facilities that do not originate from Spirit's switch.
14 Pursuant to the ICA, Spirit *may* establish trunks for ancillary 911 services.⁶ Also, the
15 ICA does not require Spirit to purchase direct 911 interconnection services (i.e.,
16 facilities) between the Spirit switch and the AT&T switch. Again, pursuant to the ICA,
17 Spirit *may* purchase Interconnection Services.⁷

18
19 Indeed, if Spirit arranged for AT&T to roll over Spirit's existing 911 trunks to
20 Bandwidth's 911 interconnection facilities, Bandwidth would likely need to purchase
21 additional interconnection facilities from AT&T to each of the AT&T Selective Routers
22 in South Carolina in order to accommodate the rolled over 911 trunks dedicated to

⁶ See Exhibit MDB-1 at Attachment 2, Section 4.1.2.

⁷ See Exhibit MDB-1 at GTCs, Section 42.1.

1 Spirit's exclusive use. This would result in additional charges from Bandwidth to Spirit,
2 eliminating the cost savings that Spirit could realize by eliminating the unnecessary costs
3 of having 911 interconnection facilities to each AT&T Selective Router in South Carolina
4 that include excess, unused capacity beyond the 911 trunks needed for the 911 calls that
5 Spirit sends from its end users to the PSAPs served by the AT&T Selective Routers.
6 Importantly, eliminating the cost savings on 911 services realized by using a third party
7 provider of 911 services like Bandwidth translates to higher costs passed through to
8 Spirit's end users.

9
10 AT&T's proposed solution is yet another attempt to force its local service competitors
11 that must access the AT&T Selective Routers to bear the costs of network inefficiencies.
12 Competition is best served by allowing CLECs such as Spirit to use the 911 services of a
13 third party provider that can aggregate CLEC 911 traffic efficiently and establish 911
14 interconnection facilities with 911 Service Providers such as AT&T that are sized
15 appropriately for the capacity of the traffic, resulting in cost savings to CLECs, and
16 therefore to the CLECs' end users.

17
18 **Q. IS SPIRIT ATTEMPTING TO CHANGE OR EXPAND THE SCOPE OF THE**
19 **CASE BY DISCUSSING 911 INTERCONNECT FACILITIES IN ADDITION TO**
20 **911 TRUNKS?**

21 A. No. The critical step for Spirit to eliminate unnecessary 911 expenses after migrating
22 911 traffic from Spirit's end users to the platform of a third party provider of 911 services
23 is to disconnect the 911 trunks that Spirit originally established with AT&T. 911 trunks

1 are provisioned on 911 interconnection facilities, as discussed more fully in the Rebuttal
2 Testimony of James Steven Covington. AT&T will not disconnect the 911
3 interconnection facilities that Spirit ordered from AT&T until all 911 trunks provisioned
4 on an interconnection facility have been removed. Accordingly, Spirit cannot eliminate
5 the charges it incurs for the 911 interconnection facilities until AT&T disconnects the
6 911 trunks as requested. The charges for 911 interconnection facilities ordered from
7 AT&T are tied to the 911 trunks provisioned by AT&T on those facilities. As a result,
8 the facilities and trunks are often reasonably grouped together and referred to simply as
9 trunks. When AT&T refuses to disconnect 911 trunks as requested by Spirit, Spirit
10 cannot disconnect the associated 911 interconnection facilities. If AT&T were abiding
11 by the terms of the ICA that provide Spirit with the option to interconnect indirectly with
12 AT&T for access to AT&T's Selective Routers, then AT&T would disconnect the 911
13 trunks as Spirit requested, and Spirit would be able to disconnect the inefficient and
14 costly 911 interconnection facilities in place to every AT&T Selective Router in South
15 Carolina. AT&T's focus on Spirit's references to 911 trunks in the Spirit Complaint are
16 merely an attempt to introduce unnecessary confusion into the case and distract the
17 Commission from the anticompetitive behavior in which AT&T is engaging.

18
19 **Q. DO THE STATEMENTS OF SPIRIT'S CHR SOLUTIONS CONSULTANT BEAR**
20 **ANY LEGAL SIGNIFICANCE IN INTERPRETING THE INTERCONNECTION**
21 **AGREEMENT BETWEEN SPIRIT AND AT&T?**

22 A. No. AT&T provides an email from Spirit's CHR Solutions consultant, Linda Lloyd, as
23 evidence that Spirit knew its attempt to disconnect 911 trunks would violate Spirit's

1 contract with AT&T, suggesting to the Commission that this consultant's statements are
2 an accurate legal interpretation of the ICA. Ms. Lloyd is not an attorney, and she is not
3 responsible for providing legal interpretation of the terms and conditions of Spirit's ICA
4 with AT&T. Ms. Lloyd's statements are nothing more than her opinion.

5
6 **Q. HOW SHOULD THE COMMISSION INTERPRET THE ICA BETWEEN SPIRIT**
7 **AND AT&T?**

8 A. The Commission should:

9 (i) Find that Spirit is not bound by the terms and conditions of Attachment 5
10 of the ICA, but rather that the ICA allows Spirit to access the AT&T E911 Selective
11 Routers through the 911 interconnection facilities and trunks of a third party provider of
12 911 services other than AT&T;

13 (ii) Find that the ICA permits Spirit to disconnect during the term of the ICA
14 any 911 trunk groups and 911 interconnection facilities it has previously ordered under
15 the ICA;

16 (iii) Find that AT&T may not continue to charge Spirit for 911 interconnection
17 facilities that are associated with 911 trunk groups that Spirit has requested be
18 disconnected;

19 (iv) Find that AT&T has breached the ICA by refusing to disconnect 911
20 interconnection facilities and 911 trunk groups that Spirit requested be disconnected and
21 by continuing to charge Spirit for the 911 interconnection facilities and 911 trunk groups
22 that Spirit requested be disconnected;

1 (v) Find that AT&T must reverse all charges for 911 interconnection facilities
2 and 911 trunk groups back to the first date on which Spirit requested disconnection of
3 such facilities and trunk groups, including any 911 interconnection facilities and 911
4 trunks groups for which Spirit did not request disconnection due to AT&T's continuing
5 refusal to disconnect those facilities and trunks already requested; and

6 (vi) Grant all such other relief as the Commission deems necessary and
7 appropriate.

8
9 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

10 A. Yes.

CERTIFICATE OF SERVICE

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